

House File 543 - Introduced

HOUSE FILE _____
BY BAUDLER

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to public intoxication by using or consuming a
2 controlled substance, and making penalties applicable.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2293YH 83
5 jm/rj/5

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1 1 Section 1. Section 123.46, subsection 1, Code 2009, is
1 2 amended by adding the following new paragraph:
1 3 NEW PARAGRAPH. bb. "Controlled substance" means a
1 4 substance or compound listed in section 124.204 or 124.206.
1 5 Sec. 2. Section 123.46, subsections 2 and 3, Code 2009,
1 6 are amended to read as follows:
1 7 2. a. A person shall not use or consume alcoholic liquor,
1 8 wine, or beer upon the public streets or highways. A person
1 9 shall not use or consume alcoholic liquor in any public place
1 10 except premises covered by a liquor control license. A person
1 11 shall not possess or consume alcoholic liquors, wine, or beer
1 12 on public school property or while attending a public or
1 13 private school-related function. A person shall not be
1 14 intoxicated or simulate intoxication in a public place. A
1 15 person violating this ~~subsection~~ paragraph is guilty of a
1 16 simple misdemeanor.
1 17 ~~3. b. When If~~ a peace officer arrests a person on a
1 18 charge of public intoxication under this section when
1 19 intoxication by alcohol is alleged, the peace officer shall
1 20 inform the person that the person may have a chemical test
1 21 administered at the person's own expense. If a device
1 22 approved by the commissioner of public safety for testing a
1 23 sample of a person's breath to determine the person's blood
1 24 alcohol concentration is available, that is the only test that
1 25 need be offered the person arrested. In a prosecution for
1 26 public intoxication pursuant to this subsection, evidence of
1 27 the results of a chemical test performed under this ~~subsection~~
1 28 paragraph is admissible upon proof of a proper foundation.
1 29 The percentage of alcohol present in a person's blood, breath,
1 30 or urine established by the results of a chemical test
1 31 performed within two hours after the person's arrest on a
1 32 charge of public intoxication is presumed to be the percentage
1 33 of alcohol present at the time of arrest.
1 34 3. a. A person shall not use or consume a controlled
1 35 substance upon the public streets or highways. A person shall
2 1 not use or consume a controlled substance in a public place.
2 2 A person shall not be intoxicated by a controlled substance in
2 3 a public place. A person violating this subsection is guilty
2 4 of a simple misdemeanor.
2 5 b. If a peace officer arrests a person on a charge of
2 6 public intoxication under this section when intoxication by a
2 7 controlled substance is alleged, the peace officer shall
2 8 inform the person that the person may have a chemical test of
2 9 the person's blood or urine administered at the person's own
2 10 expense. In a prosecution for public intoxication pursuant to
2 11 this subsection, evidence of the results of a chemical test
2 12 performed under this subsection is admissible upon proof of a
2 13 proper foundation. The percentage of a controlled substance
2 14 present in a person's blood or urine established by the
2 15 results of a chemical test performed within two hours after
2 16 the person's arrest on a charge of public intoxication is
2 17 presumed to be the percentage of a controlled substance
2 18 present at the time of arrest.
2 19 Sec. 3. Section 123.46, Code 2009, is amended by adding
2 20 the following new subsection:

2 21 NEW SUBSECTION. 6. A person does not commit a violation
2 22 of subsection 3 if the controlled substance used or consumed
2 23 was prescribed for the person and was used or consumed in
2 24 accordance with the directions of a practitioner as defined in
2 25 section 155A.3 or if such substance was dispensed by a
2 26 pharmacist without a prescription pursuant to the rules of the
2 27 board of pharmacy.

2 28 Sec. 4. IMPLEMENTATION OF ACT. Section 25B.2, subsection
2 29 3, shall not apply to this Act.

2 30 EXPLANATION

2 31 This bill relates to public intoxication by using or
2 32 consuming a controlled substance.

2 33 The amendment to Code section 123.46 provides that a person
2 34 shall not use or consume a controlled substance upon the
2 35 public streets or highways. The bill also prohibits a person
3 1 from using or consuming a controlled substance in a public
3 2 place or being intoxicated by such a controlled substance in a
3 3 public place. The bill requires a peace officer to inform the
3 4 person that the person may have a chemical test of the
3 5 person's blood or urine administered at the person's own
3 6 expense to determine the percentage of a controlled substance
3 7 present in a person's blood or urine.

3 8 The bill defines "controlled substance" to mean a schedule
3 9 I or II substance or compound listed in Code section 124.204
3 10 or 124.206.

3 11 The bill also provides that a person does not violate Code
3 12 section 123.46 if the controlled substance or other substance
3 13 used or consumed was prescribed for the person and was used or
3 14 consumed in accordance with the directions of a medical
3 15 practitioner as defined in Code chapter 155A or if the
3 16 substance was dispensed by a pharmacist without a prescription
3 17 pursuant to the rules of the board of pharmacy.

3 18 A person who violates the bill commits a simple
3 19 misdemeanor.

3 20 The bill may include a state mandate as defined in Code
3 21 section 25B.3. The bill makes inapplicable Code section
3 22 25B.2, subsection 3, which would relieve a political
3 23 subdivision from complying with a state mandate if funding for
3 24 the cost of the state mandate is not provided or specified.
3 25 Therefore, political subdivisions are required to comply with
3 26 any state mandate included in the bill.

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